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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,839	05/06/2002	Hans-Dieter Borowsky	HHI-035US	8658

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LAHIVE & COCKFIELD, LLP.
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BOSTON, MA 02109

EXAMINER

NI, SUHAN

ART UNIT	PAPER NUMBER
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2643

DATE MAILED: 11/29/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

10/019,839

Applicant(s)

BOROWSKY, HANS-DIETER

Examiner

Suhan Ni

Art Unit

2643

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 02 August 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: Please see next page.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: Please see next page.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☐ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:


Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: _____.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____


Suhan Ni
Primary Examiner
Art Unit: 2643

Advisory Action

1. This communication is responsive to the after-final amendment dated 08/02/2004.

Response

2. The newly proposed amendment has been fully considered, but it does not to be persuasive for placing the application in the condition for allowance.

The newly added limitation in claim1 fails to overcome the latest rejection.

A behind-the-ear (BTE) type hearing aid usually refers to a hearing aid having a long, thin and curvature, or "hook" shaped configuration. It is located behind the user of a user when being used. The cited reference (U. S. Pat. – 5,344,433) teaches a typical BTE type hearing aid (please see Fig. 1). This type hearing aid has a rather larger configuration for the hearing aid to be put behind a user's ear and to firmly stay in that location when it is in use.

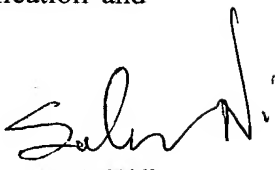
An in-the-canal (ITC) or complete-in-canal (CIC) type hearing aid refers to a hearing aid having a short and small configuration. It is located in the ear canal of a user when being used. The cited reference (U. S. Pat. – 6,430,296) teaches a typical in canal type hearing aid (please see Fig. 1). This type hearing aid has a rather smaller configuration for the hearing aid to be put entirely or partially into the ear canal of a when it is in use.

Therefore, based on Figs. 1-6 and specification of this application, a person having average skill in the art cannot clearly see and/or understand that the claimed hearing aid, especially showing in Figs. 1-6, can be used as a BTE type hearing aid as claimed.

The examiner highly recommends the applicant to further amend the specification and drawings for providing clearly description of the claimed limitations.

SN

November 27, 2004


SUHAN NI
PRIMARY EXAMINER